



Signed and Filed: September 14, 2011

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 10-31683 TEC
)	
STEVEN GIBBS, aka STEVEN ALAN)	Chapter 7
GIBBS, aka STEVE GIBBS, dba)	
BLUE RIDGE MASONRY, INC., and)	
DEANE GIBBS, aka DEANE ANNE GIBBS,)	
aka DINA GIBBS, aka DEANE COCKBURN,)	
fka DEANE MARTINEZ,)	
)	
)	
)	
)	
Debtors.)	

MEMORANDUM RE TRUSTEE'S APPLICATION FOR COMPENSATION

The court held a hearing on September 6, 2011 regarding Trustee's application for compensation. E. Lynn Schoenmann appeared *in pro per* as Trustee.

Trustee seeks \$50,835, the maximum compensation permissible under section 326(a) of the Bankruptcy Code. For the reasons set forth below, I determine that the amount sought is unreasonably large.

This court has previously held that the maximum amount permissible under section 326(a) will generally, but not always, be allowed as reasonable compensation to a trustee in a chapter 7 case.

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2 [T]here may be cases where the amount of "moneys
3 disbursed" by the trustee may be very high in relation to
4 the services performed, presenting a risk that a trustee
5 may be overcompensated by applying the commission
6 percentage. . . . cases where there are significant
7 disbursements without a proportionate effort by the
trustee, are examples of cases where the commission fee
may not be reasonable. In such cases, even if all the
services were properly performed, courts will need to
assess whether the implied hourly rate is so high as to
render the fee not reasonable.

8 In re McKinney, 374 B.R. 726, 731-32 (Bankr. N.D. Cal. 2007)

9 (quoting L. King, Collier on Bankruptcy, ¶ 330.03[1][a] at pp. 330-
10 15-330-16 (15th ed. rev'd 2006)).

11 In the present case, the maximum fee is substantially
12 disproportionate to the services performed by Trustee. First,
13 Trustee did not engage in any complex and difficult recovery of
14 assets; Trustee merely sold the Debtors' house and two cars.
15 Second, Trustee never was at risk that her fees would not be paid.
16 Third, Trustee effected the sale of the house and cars with
17 substantial help from various professionals who were paid
18 substantial fees for that work. Trustee and buyer both employed
19 real estate brokers to handle the sale of the house. Trustee hired
20 an auctioneer to effect the sale of the two cars. Trustee's
21 counsel was paid approximately \$7,800 for work related to the sale
22 of the house and cars. Fourth, Trustee herself expended little
23 time on this case. Her time records show that she expended 25.2
24 hours on the entire case, and only 8.3 hours on the sale of the
25 house and cars. Paying Trustee the \$50,836 statutory maximum would
26 be equivalent to paying her more than \$2,000 per hour for work that
27 can only be described as routine.

28 Trustee argued at the hearing that reducing her compensation

1 would result in no benefit to creditors. This is so, she argued,
2 because the estate would have just enough to pay allowed priority
3 claims almost in full if her fees are allowed as requested, but
4 would have to engage in expensive claims litigation if any amount
5 is left for general unsecured creditors (GUCs). She acknowledges
6 that she has not engaged in any close analysis of GUCs, but noted
7 that Debtors listed most of the scheduled GUCs as disputed.

8 Trustee's argument is not persuasive. First, GUCs with valid
9 claims would benefit from any savings in Trustee's compensation
10 fee, even if Trustee did not review claims and object to
11 questionable ones - something is better than nothing. Second, it
12 appears that Trustee has already found wanting the grounds upon
13 which Debtors scheduled GUCs as disputed. With respect to every
14 disputed claim save one, Debtors stated that they disputed the
15 claim on the basis that the claim was properly a liability of their
16 wholly owned corporation. Among those claims were several claims
17 for unpaid wages. Yet Trustee has included those wage claims among
18 the priority claims to be paid, without raising the objection
19 asserted by Debtors. Trustee may have concluded that grounds exist
20 to disregard the corporate form. Among filed GUCs totaling
21 \$300,000, the only claim that the Debtors disputed on any other
22 basis is a \$6,000 deficiency claim asserted by Toyota following the
23 Debtors' surrender of their vehicle. Given the above, Trustee may
24 very well conclude that no objections to claim are warranted.

25 Trustee may do either of the following. If Trustee
26 determines, from what the court has noted here as well as her prior
27 knowledge of the case, that it would not be cost effective to
28 review claims further or to object to claims, she may pay herself

1 compensation in the amount of \$12,500, and distribute the newly
2 available funds to filed priority creditors and GUCs without
3 further notice or hearing. If Trustee determines that further
4 review of claims or objections to claims would be cost effective,
5 she may continue to administer the case and file an amended fee
6 application upon the completion of such duties. Trustee should
7 advise the court as to which course she determines to be
8 appropriate, and the court will thereupon enter an appropriate
9 order.

10 ****END OF MEMORANDUM****
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